

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-14, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday (U.S. 7340990) taken together with Fox (U.S. 2977231) and Russoff (U.S. 2954293).

The claims stand rejected for the reasons set forth in the last Office Action (mailed 11/12/09).

### ***Response to Arguments***

3. Applicant's arguments filed 5/12/10 have been fully considered but they are not persuasive.

Applicant argues that Russoff teaches problems with using cocoa powder in beverages and, therefore, teaches away from the instant invention which requires the inclusion of cocoa powder. It should be noted that Russoff does not specifically articulate the exclusion of cocoa powder in beverages, and in fact, leaves the door open for the presence of cocoa powder by reciting that the absence of same is "desirable" and not required (e.g. col. 2, lines 50-53). In addition, Russoff appears to also provide an embodiment wherein cocoa powder is reincorporated with cocoa extract into a material

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used to flavor beverages (col. 8, lines 51-58). In any event, Rusoff was not applied for teaching the presence of cocoa powder in a beverage having a cocoa taste enhancer. Rather, Fox was applied for teaching the presence of cocoa powder in chocolate beverages. Rusoff was applied for teaching the method, as claimed, for preparing a cocoa extract used in beverages, same acting as a cocoa taste enhancer. Since Rusoff does not altogether teach away from the further presence of cocoa powder, same may be properly applied with the other references of the rejection above.

All other arguments are addressed in view of the rejection as set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY WEIER whose telephone number is (571)272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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